

Department of Energy

§ 703.131

by the parties and the presiding member at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 703.124 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties on their request at such rates as may be fixed.

§ 703.125 Withdrawal of exhibits.

After final decision, the Board may, upon request and after notice to the other parties, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 703.126 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 703.127 The respondent.

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or its attorney in the form specified by the Board from time to time.

DECISIONS

§ 703.128 Written decisions.

Decisions of the Board shall be made in writing and served simultaneously to all parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the of-

fices of the Board, and the DOE public document room in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in § 703.113.

MOTION FOR RECONSIDERATION

§ 703.129 Motion for reconsideration.

A motion for reconsideration, if filed by a party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 703.130 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue for an inordinate length of time, the Board may, in its discretion, dismiss such appeal from its docket without prejudice to its restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 703.131 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 703.132 Ex Parte conduct.

No member of the Board, or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to requests for information concerning the Board's administrative functions or procedures.

SANCTIONS

§ 703.133 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

SECURITY

§ 703.134 Security requirements.

All proceedings shall be so conducted and the Board shall take such steps as necessary to insure compliance with the security regulations and requirements of the Agency.

Subpart B—Rules of the Contract Adjustment Board [Reserved]

APPENDIX A—ORGANIZATION AND FUNCTIONS, DOE MANUAL, CHAPTER 0114, OFFICE OF THE BOARD OF CONTRACT APPEALS

0114-01 SUPERVISION

Under the supervision of a Chairman, who is appointed by and reports to the Administrator.

0114-02 FUNCTIONS AND AUTHORITY

Acts for the Administrator to provide for the orderly, impartial, fair, and expeditious handling of contract appeals, applications for extraordinary relief under Public Law 85-804, and such other matters as may be referred to the Board by the Administrator. Specifically:

021 The Board, both when acting as the Board of Contract Appeals and as the Contract Adjustment Board, acts for and exercises the full authority of the Administrator

in hearing, considering, and deciding all proceedings within the scope of this chapter.

022 The Board shall have all powers necessary for the performance of its duties, including but not limited to the authority to conduct hearings, call witnesses, dismiss appeals with or without prejudice, order the production of documents and other evidence, administer oaths and affirmations, issue subpoenas, order depositions to be taken, take official notice of facts within general knowledge, and decide all questions of fact and law. Decisions rendered by the Board are final decisions of the Administrator. All such decisions will be by a majority of the Board. Decisions on questions of law are subject to 68 Stat. 81 (1954). 41 U.S.C. 321 and 322 (1970 ed.) relating to finality.

023 Members of the Board are designated as Administrative Judges and the Chairman is designated Chief Administrative Judge.

024 Board members may perform such other quasi-judicial functions as are assigned by the Administrator.

025 The Board shall establish and issue rules of procedure not inconsistent with this chapter.

026 When acting as the Board of Contract Appeals, the Board shall:

a. Consider and decide appeals from decisions of DOE contracting officers in disputes arising under:

(1) Any DOE prime contract containing a dispute provision requiring an DOE contracting officer's decision and providing for an appeal therefrom to the Administrator, and

(2) Any subcontract entered into by a cost-type prime contractor in which such a dispute provision has been included in accordance with DOE Procurement Regulations.

b. Assess liquidated damages pursuant to section 104(c) of the Contract Work Hours and Safety Standards Act (40 U.S.C. sections 327-332).

c. Conduct hearings and decide proceedings for debarment of contractors.

027 When acting as the Contract Adjustment Board, the Board shall:

a. Exercise the authority of the Administrator with respect to contractual fairness cases and such other matters as may be referred to the Board by the Administrator or his designee in accordance with the provisions of 41 CFR 9-17, "Extraordinary Contractual Actions to Facilitate the National Defense." When so designated, and functioning as the Contract Adjustment Board, it shall proceed in the same general manner as when it presides as the Board of Contract Appeals. However, decisions of the Contract Adjustment Board will not be cited as precedent on other matters brought to the Contract Adjustment Board.